IN THE HIGH COURT OF JUDICATURE FOR
RAJASTHAN
AT JAIPUR BENCH JAIPUR.

S.B. CIVIL WRIT PETITION NO.**2149/1998.**

**Narain**
**Vs.**
**State and ors.**

Date of Order:- 22/10/2007.

PRESENT
**HON'BLE MR.JUSTICE MOHAMMAD RAFIQ**

Shri K.K. Mehrishi Senior Advocate with
Shri Timan Singh for the petitioner.
Shri Harshvardhan Nandvana, Deputy GA for State.
Shri J.P. Goyal for respondents No.5 & 6.

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Reportable

This writ petition has been filed against the judgment of the Board of Revenue dated 22/12/1997 and judgment of the Revenue Appellate Authority dated 28/3/1994 and that of Assistant Collector Kota dated 30/9/1988 with the prayer that petitioner be declared entitled to half of the share of the suit land and non-petitioners No.5 and 6 be held entitled to 1/4$^{th}$ share and accordingly decree of division of holding finally passed by the Board of Revenue be modified and the possession be granted to the petitioner.

2) Petitioner-Narain claims to be the

adopted son of Devilal, who is natural father of Smt.Kishori Bai and Smt.Shanti Bai, respondents No.5 and 6, respectively. The respondents No.5 and 6 filed a suit for declaration and division of holding under Sections 88 & 53 of the Rajasthan Tenancy Act, 1955 (for short, “the Act”) impleading Smt.Bhooli Bai, their mother (since deceased) and petitioner-Narain as defendant. It was contended that the land measuring 24 bighas and 2 biswa situated in revenue village Godliya Heri was in the khatedari of defendant Smt.Bhooli Bai, out of which, she sold 8 bighas 3 biswa of land in favour of respondent No.5 Smt.Kishori Bai through registered sale-deed dated 20/4/1974 and remaining 15 bighas 19 biswa of land continued to be entered in her name in the revenue records. It was averred that plaintiffs and Smt.Bhooli Bai were sole legal heirs of deceased Devilal and each of them were entitled to get 1/3$^{rd}$ share in the remaining land of 15 bighas and 19 biswa of deceased Devilal along. Since Devilal died in 1968, the plaintiffs were entitled to inherit entire property left by the khatedar-tenant

Devilal. It was therefore prayed that a direction be issued for entering the lands in their separate khatedari in the revenue record.

3) Defendant-Smt.Bhooli Bai and petitioner-Narain contested the suit and contended that the disputed land was in their joint khatedari and Smt.Bhooli Bai had no right to sell the same to respondent No.5. Before division of holding, the sale was got affected by deception and by use of coercion. Defendant-Narain was adopted by Smt.Bhooli Bai when he was only three years old. The disputed land was entered in the joint khatedari of Smt.Bhooli Bai and Narain. They thereafter got the same divided by filing revenue suit and were presently in possession of their respective share. The disputed lands devolved upon Shri Devilal the husband of Smt.Bhooli Bai on death of Shri Rama who was his maternal uncle.

4) The Sub-Divisional Officer framed nine issues and examined three witnesses on behalf of the plaintiffs and three on behalf of the defendants. The S.D.O. vide judgment dated 30/9/1988 decreed the suit and declared the plaintiff-respondents No.5 and 6 as khatedars of

the land and entitled to 1/3rd share of the total land left by deceased Devilal and directed division of holding on those lines.

5) The petitioner filed an appeal before the revenue appellate authority which vide its judgment dated 28/3/1994 dismissed the appeal against which he filed further appeal before the Board of Revenue which was also dismissed the same vide its judgment dated 22/12/1997. Hence, the writ petition.

6) I have heard Shri K.K. Mehrishi, learned senior counsel for the petitioner, Shri Harshvardhan Nandwana, learned Deputy Government Advocate for the State and Shri J.P. Goyal, learned counsel appearing for respondents No.5 and 6 and perused the record.

7) Shri K.K. Mehrishi, learned senior counsel for the petitioner argued that Smt.Bhooli Bai in her lifetime had contested the suit filed by the plaintiff-respondents No.5 & 6 and had recognised the fact that the petitioner was adopted when he was only three years old and further that when deceased Devilal expired, he divided agricultural land measuring 24 bighas and

2 biswa equally between Narain and Smt.Bhooli Bai. That position was accepted by the decree of the first revenue court. Smt.Bhooli Bai herself stated that sale-deed of land measuring 8 bighas and 3 biswa out of total land of Khasra No.57 was null and void because the division of holding had yet not taken place. Besides, this, the petitioner-Narain had also share therein. Shri K.K. Mehrishi, learned senior counsel for the petitioner further argued that petitioner was in possession of the subject-land along with Smt.Bhooli Bai at the time of filing of the suit. Smt.Bhooli Bai died during the pendency of the appeal before the revenue appellate authority. During her lifetime, she executed a Will in favour of petitioner on 12/5/1982. Shri K.K. Mehrishi, learned Senior counsel for the petitioner argued that the learned Assistant Collector having given a positive finding that petitioner was adopted son of Devilal and Smt.Bhooli Bai had executed a will in his favour only upto her own share, whatever share was inheritable by Smt.Bhooli Bai upon the death of her husband Shri Devilal was therefore entitled

to be awarded to the petitioner and in this manner there ought to have been four shares in the disputed land each of the defendant-petitioner Narain, Smt.Bhooli Bai and plaintiff-respondents No.5 & 6. Thus, the petitioner shall be entitled to half of the land and not 1/3rd as held by the court below. It was argued that the Board of Revenue has wrongly ignored the will executed by Smt.Bhooli Bai in favour of petitioner-Narain on the premise that she could not bequeath half of the disputed land to the petitioner because she was having only 1/4th share therein. Even if that be accepted, the petitioner was entitled to decree of her 1/4th share on the basis of devolution by the will. And in this manner, the total land measuring 24 bighas and 6 biswa and 1/4th out of that, being in the share of Smt.Bhooli Bai, the petitioner would be entitled not only to 1/4th of his own share but also 1/4th share of Smt.Bhooli Bai, thus, half of the total land. It was argued that the learned Revenue Appellate Authority as well as the Board of Revenue have erred in law in directing that petitioner as well as defendants No.5 & 6 were

entitled to equal 1/3rd share of the disputed land. It was argued that the findings recorded by the Board of Revenue were contradictory in terms that while on the one hand, the Board has awarded 1/3rd share out of the total land to the plaintiff-respondents No.5 and 6 but on the other hand, it has held that the sale-deed in favour of the plaintiff-respondent No.5 would be valid. It was therefore prayed that the writ petition be allowed.

8) On the other hand, Shri J.P. Goyal, learned counsel appearing for respondents No.5 & 6 opposed the writ petition and argued that so far as the land measuring 8 bighas and 3 biswa sold out to the petitioner by Smt.Bhooli Bai by registered sale-deed dated 20/4/1974 is concerned, she did so in exercise of her rights as khatedar-tenant of that land. The land was purchased by non-petitioner No.5 against sale consideration of Rs.4500/- and the sale-deed was duly executed and registered before the Sub-Registrar Kota. She was in possession of that land and was cultivating the same as it is lawful owner. Shri J.P. Goyal, learned counsel for the

plaintiff-respondents No.5 and 6 further argued that while non-petitioners No.5 and 6 are naturally born daughters of deceased Smt.Bhooli Bai and Devilal, the petitioner-Narain is claiming disputed land on the basis of the alleged adoption which is being contested by the defendant. The defendant-petitioner, inspite of the fact that he was fully aware of the sale-deed executed by Smt.Bhooli Bai in favour of the plaintiff-non-petitioners No.5 and 6, has chosen not to challenge the same and get the sale-deed set-aside. Controversy thus would now remain confined to only remaining 15 bighas and 19 biswa of land. With the death of father, Devilal and mother Smt.Bhooli Bai, petitioner as well as plaintiff-respondents No.5 and 6 have rightly been held entitled to 1/3$^{rd}$ share in the disputed property. The learned courts below cannot be therefore said to have either exceeded in their jurisdiction or otherwise acted illegally in passing the impugned-judgments. It was argued that upon the death of Devilal, defendant-Narain could not legally get their entire land mutated in his favour on 30/5/1976 vide Mutation No.84

including the land which was purchased by non-petitioner No.5 two years there before. Even according to the Hindu Succession Law, the naturally born daughters were lawfully entitled to receive their share in the property of their father. The petitioner could not be allowed to grab the entire land. It was therefore argued that the courts below have concurrently held that defendant-petitioner and plaintiff-respondents No.5 and 6 are entitled to 1/3rd share of the disputed property. The impugned-judgments therefore do not suffer from legal error so as to warrant interference by this court. It is therefore prayed that the writ petition be dismissed.

9) I have given my thoughtful consideration to the rival submissions made at the bar and have gone through the judgments cited by the learned counsel and also perused the material available on record.

10) From the facts as noted above, it is evident that the original khatedar Devilal had 24 bighas and 2 biswa of land in his khatedari and upon his death, the said land was entered in the

khatedari of his wife Smt.Bhooli Bai. Out of that land, 10 bighas and 3 biswa of the land was in Khasra No.57 and 8 bighas and 3 biswa of that land had been sold by Smt.Bhooli Bai to non-petitioner No.5 against the sale consideration of Rs.4500/- by execution of a duly registered sale-deed on 20/4/1974. There thus remained only 15 bighas and 19 biswa of land in the khatedari of Smt.Bhooli Bai. The petitioner is claiming half of that land on the premise that Smt.Bhooli Bai had bequeathed half of the share of the entire 24 bighas and 2 biswa to him by execution of a registered will dated 12/5/1982. The record shows that the revenue suit in question was filed by plaintiff-respondents No.5 and 6 by impleading not only the defendant-petitioner Narain as defendant but also Smt.Bhooli Bai. This was therefore a revenue suit filed at the instance of plaintiff-respondents No.5 and 6 in which the prayer was made for division of holding and getting the mutation of half of the share of the disputed land in the name of defendant-petitioner Narain as illegal and with further declaration that plaintiff-respondents No.5 and 6 and their

mother defendant No.1 Smt.Bhooli Bai each were entitled to 1/3rd share of that land. The first revenue court decreed the suit but when that judgment dated 30/9/1988 was challenged before the revenue appellate authority, the authority rejected the appeal. Though, it has come on record that Narain died in the year 1968, but it is not borne out as to on what date Smt.Bhooli Bai died though the date of execution of will by her is 12/5/1982. From para 8 of the judgment of the Board of Revenue, however, it is revealed that Smt.Bhooli Bai died during the pendency of the revenue suit before the trial court. The trial court therefore proceeded on the footing that with Smt.Bhooli Bai now no more alive, there remained only three claimants to the property in dispute and that the land in dispute was measuring 15 bighas and 19 biswa only. Sale-deed having been executed by Smt.Bhooli Bai in her own right as a khatedar-tenant and not being subjected to challenge by defendant-Narain by any procedure known to law, could be treated as nullity on his mere *ipse-dixit* that division of holding having not been placed by meets & bounds,

Smt.Bhooli Bai did not have any right to sell the property. In fact, sale-deed was executed by Smt.Bhooli Bai on 20/4/1974 and the facts which have come on record show that half of the share in the disputed land was got recorded by petitioner-Narain in his name on 30/5/1976 which was challenged by the plaintiff-respondents No.5 and 6 in the present revenue suit. Though the learned court has acknowledged the fact of adoption of defendant-Narain in its judgment on the basis of the admission made by deceased Smt.Bhooli Bai but there is no finding by any of the courts as to correctness or otherwise of the will and will executed by one co-defendant in favour of another co-defendant by itself could not annure to his benefit unless claim was set up by the defendant-petitioner on that basis in a duly constituted revenue/civil suit. That having not been done now at this belated stage, the petitioner cannot be allowed to construct an argument on that basis that Smt.Bhooli Bai having bequeathed half of the share in the disputed share, if not half, he should be awarded 1/4$^{th}$ share in addition to the 1/4$^{th}$ share to which he

is otherwise entitled. But even that argument proceeds on ignorance of the fact that whatever share Smt.Bhooli Bai had in the property, she had already parted with the same by selling out it to the non-petitioner No.5 against sale consideration.

11) The Board of Revenue has clearly noted the fact that when the suit was decreed, only three claimants were surviving namely, naturally born daughters of Devilal, plaintiff-respondents No.5 and 6 and adopted son, defendant-petitioner Narain. The learned Board of Revenue has also held that the earlier suit filed by the defendant-petitioner in which a declaration was obtained by him that he along with Smt.Bhooli Bai was entitled to half of the share of the disputed land was not binding on the respondents No.5 and 6 because they were not party to that suit. The Board of Revenue further held that when Smt.Bhooli Bai had only 1/4$^{th}$ share and did not have half share in the disputed land, she could not bequeath half of the share in the disputed land in favour of defendant-petitioner. But even if that finding is not ignored, the fact remains

that no relief on the strength of the will could be granted to the defendant-petitioner in the revenue suit preferred by the plaintiff-respondents No.5 and 6.

12) In my considered view therefore the courts below have concurrently and correctly decided the revenue suit by holding each of the daughters and one adopted son entitled to 1/3rd share in the disputed land.

13) None of the impugned-judgments therefore suffer from any such legal infirmity as may be described an error apparent on the face of record so as to justify interference by this Court.

The writ petition is therefore dismissed though with no order as to costs.

**(MOHAMMAD RAFIQ), J.**

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